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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/559,680	12/06/2005	Serge Calamel	0512-1306	3014

466 7590 01/07/2010  
YOUNG & THOMPSON  
209 Madison Street  
Suite 500  
Alexandria, VA 22314

EXAMINER
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SCHILLINGER, ANN M

ART UNIT	PAPER NUMBER
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3774

NOTIFICATION DATE	DELIVERY MODE
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01/07/2010

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

DocketingDept@young-thompson.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/559,680	<b>Applicant(s)</b> CALAMEL, SERGE	
	<b>Examiner</b> ANN SCHILLINGER	<b>Art Unit</b> 3774	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 02 September 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 15-33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 15-33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 15-20, 23, and 25-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maumy et al. (U.S. Pat. No. 5,735,901) in view of Willi (US Pat. No. 5,549,696). Maumy et al. discloses the following of the claimed invention: an acetabular implant cup insert for a joint prosthesis, the insert comprising a metal shell or cup (1) and a lining (31) lining the inside space of said shell, a receptacle (please see Fig. 3b) for a prosthetic head being formed in the lining, said shell presenting on its inside space a stud (3) having a groove and a lip (on the threaded portion of element 3) for preventing said lining being extracted from the shell and means for preventing the lining turning in the shell. Maumy et al. also includes depressions (17a) and projections (17) for preventing the lining from turning in the shell.

Maumy et al. does not disclose the insert lining being composed of a polymeric material. Willi teaches a hip prosthesis having a metal outer shell and a polymer cast insert lining that fits with the shell to permanently interlock the lining with the shell in col. 2, lines 40-67 where the plastic lining is a cast polymer that is permanently fitted to the outer shell via element 8. The polymer cast insert lining will improve the wear characteristics of the device. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was

Art Unit: 3774

made to modify the insert lining of Maumy et al. to be made of a polymer in order to improve the wear characteristics of the device.

Regarding claims 25 and 26, please note that these claims have method limitations in article claims. As these claims are directed to method steps that depend from an article claim, they have been considered in so far as the method further defines the structure of the article.

Regarding claims 30 and 31, please note that it has been held that the term "integral" is sufficiently broad to embrace constructions united by such means as fastening and welding. *In re Hotte*, 177 USPQ 326, 328 (CCPA 1973).

Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Maumy et al. in view of Willi, further in view of Noble et al. (U.S. Pat. No. 5,002,580). Maumy et al., as modified by Willi, does not teach the use of ceramics as a liner along the insert because ceramics are biologically inert and serve well as a bearing surface. Noble et al. teaches a prosthetic device with ceramics as a liner in col. 9, lines 9-13. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use ceramics in the implant because they will not react badly in the patient's body while still providing a strong bearing surface.

Please note that the claims do not invoke 35 U.S.C. 112, sixth paragraph. A claim limitation will be presumed to invoke 35 U.S.C. 112, sixth paragraph, if it meets the following 3-prong analysis: (A) the claim limitations must use the phrase "means for" or "step for;" (B) the "means for" or "step for" must be modified by functional language; and (C) the phrase "means for" or "step for" must not be modified by sufficient structure, material, or acts for achieving the specified function. In the instant case, the phrase "means for" has been modified by sufficient structure for achieving the specified function.

### ***Claim Objections***

Claims 21 and 22 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Response to Arguments***

Applicant's arguments with respect to claims 15-33 have been considered but they are not persuasive. The Applicant contends that the groove (element 3 of Figure 2c in Maumy et al.) cannot be disclosed as a stud. However, as stated above and in the previous office action, the embodiment shown in Figures 3a-3b of Maumy et al. are being used to anticipate the current Application. In Figures 3a-3b, element 3 refers to a "connection element" which is shown as a stud.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Art Unit: 3774

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANN SCHILLINGER whose telephone number is (571)272-6652. The examiner can normally be reached on Mon. thru Fri. 9 a.m. to 4 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Isabella can be reached on (571) 272-4749. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/A. S./

Examiner, Art Unit 3774

/DAVID ISABELLA/

Supervisory Patent Examiner, Art Unit 3774